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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/570,230

08/17/2006

Thorsten Bechert

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EXAMINER

VU, JAKE MINH

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/570,230	Applicant(s) BECHERT ET AL.	
	Examiner JAKE M. VU	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-70 is/are pending in the application.
- 4a) Of the above claim(s) 51-70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/12/10, 2/28/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of Applicant's Restriction Requirement Response and Amendment filed on 04/12/2010; and Information Disclosure Statements filed on 01/12/2010 and 02/28/2006.

- Claims 32-70 are pending in the instant application.
- Claims 51-70 are withdrawn from consideration.

Election/Restrictions

Applicant's election with traverse of Group I (claims 32-50) and specie elections of "ointment constituent", "cream", and "infection" in the reply filed on 04/12/2010 is acknowledged. The traversal is on the ground(s) that independent claims 32 and 51 have each been amended to recite a special feature comprising a porosity of at least 65% which constitutes a contribution over the prior art. This is not found persuasive because the prior art BERCHET et al teaches a porosity of between 70-90% (see col. 2, line 34-35).

The requirement is still deemed proper and is therefore made FINAL.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-45, 47-50 are rejected under 35 U.S.C. 102(b) as being anticipated by BECHERT et al (WO 02/17984; wherein US 6,984,392 is used as a translation).

Applicant's claims are directed to a composition comprising: porous particles containing metallic silver particles, wherein the porous particles have a mean diameter of 2-20 micron, internal porosity of 85-95%; specific gravity of 3.5-4.5 m2/g; sponge-like. Additional limitations include: agglomerates of metallic silver particles, wherein the metallic silver particles have diameter of about 15-80nm; mean distance of outermost primary (metallic silver) particles are about 100-200nm; ointment constituent; composition is a cream.

BECHERT teaches an antimicrobial composition comprised of: porous particles containing metallic silver particles (see col. 2, line 49; col. 4, line 8), wherein the porous particles have a mean diameter of 10-20 micron (see col. 2, line 32-33), internal porosity of 70-95% (see col. 2, line 33-35), which would make it sponge-like; specific gravity of 3-6 m2/g (see col. 2, line 32-33). Additional limitations include: agglomerates (see col. 2, line 8-10) of metallic silver particles (see col. 4, line 8-9), wherein the metallic silver particles have diameter of about 10-100nm (see col. 3, line 8-9); can be formed from Ag, Zn, and Cu (see col. 2, line 42-43); mean distance of outermost primary (metallic

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silver) particles are about 100-200nm (see Figure 2), wherein the particles are made by the same method as disclosed by Applicant; the silver porous particles are placed in Muller-Hinton agar (see col. 5, line 8-9), in which the agar are made with starch and would read on ointment constituent; the silver porous particles have antimicrobial and are compared with another antimicrobial agent, such as gentamycin (see col. 4, line 65).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over BECHERT et al (WO 02/17984; wherein US 6,984,392 is used as a translation) in view of HANKE et al (US 6,720,006)

Applicant's claims are directed to a composition comprising: porous particles containing 99% metallic silver particles, wherein the porous particles have a mean diameter of 2-20 micron, internal porosity of 85-95%; specific gravity of 3.5-4.5 m2/g; sponge-like. Additional limitations include: agglomerates of metallic silver particles, wherein the metallic silver particles have diameter of about 15-80nm; mean distance of outermost primary (metallic silver) particles are about 100-200nm; ointment constituent; composition is a cream.

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As discussed above, BECHERT teaches an antimicrobial composition comprised of: porous particles containing metallic silver particles (see col. 2, line 49; col. 4, line 8), wherein the porous particles have a mean diameter of 10-20 micron (see col. 2, line 32-33), internal porosity of 70-95% (see col. 2, line 33-35), which would make it sponge-like; specific gravity of 3-6 m2/g (see col. 2, line 32-33). Additional limitations include: agglomerates (see col. 2, line 8-10) of metallic silver particles (see col. 4, line 8-9), wherein the metallic silver particles have diameter of about 10-100nm (see col. 3, line 8-9); can be formed from Ag, Zn, and Cu (see col. 2, line 42-43); mean distance of outermost primary (metallic silver) particles are about 100-200nm (see Figure 2), wherein the particles are made by the same method as disclosed by Applicant; the silver porous particles are placed in Muller-Hinton agar (see col. 5, line 8-9), in which the agar are made with starch and would read on ointment constituent; the silver porous particles have antimicrobial and are compared with another antimicrobial agent, such as gentamycin (see col. 4, line 65). BERCHERT only teaches using the antimicrobial composition in implants and coating on medical devices, such as catheter (see col. 2, line 63-66).

BERCHERT does not teach using the antimicrobial composition in a cream form.

HANKE teaches a composition comprised of: silver particles as an antimicrobial agent (see abstract; and col. 1, line 41-44) in a cream form (see col. 5, line 24-30; col. 6, Example 3). Additional disclosures include: body care products (see col. 10-32); already known as well to use silver in various forms as an antimicrobial agent (see col.

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1, line 41-44), such as cream (see col. 1, line 26) and medical components (see col. 1, line 47) like catheters (see col. 1, line 59).

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate BERCHERT's silver composition into cream form.

The person of ordinary skill in the art would have been motivated to make those modifications, because the cream form composition would be able to treat skin infection, and reasonably would have expected success because silver particles were known to be in cream form and incorporated into medical components in the prior art.

The references do not specifically teach the exact particle sizes and amount of ingredients as claimed by Applicant. The size and amount of ingredients in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ and reasonably would expect success, such as amount of antibacterial effect. It would have been customary for an artisan of ordinary skill to determine the optimal the size and amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of Applicant's invention.

Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAKE M. VU whose telephone number is (571)272-8148. The examiner can normally be reached on Mon-Tue and Thu-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/
Primary Examiner, Art Unit 1618